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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/717,758   | 11/20/2003  | Brandon Rickman      | 30650/39706         | 8772             |
| 4743   | 7590        | 04/20/2004           | EXAMINER            |                  |
| MARSHALL, GERSTEIN & BORUN LLP<br>6300 SEARS TOWER<br>233 S. WACKER DRIVE<br>CHICAGO, IL 60606 |             |                      | LOBO, IAN J         |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3662                |                  |

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 10/717,758             | RICKMAN, BRANDON    |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | Ian J. Lobo            | 3662                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 21 is/are allowed.
- 6) Claim(s) 1-8 and 11-18 is/are rejected.
- 7) Claim(s) 9,10,19 and 20 is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: ____.                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4, line 2, there is no antecedent for "the sonic range finder".

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 3, 4, 5, 6, 11, 12, 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by the US patent to Rando ('627).

With respect to instant claim 1, Rando discloses (see Fig. 13C) a measuring apparatus that includes a housing (102), a retractable tape (104) and a laser pointer (10). On col. 12, line 58 – col. 13, line 4, Rando suggests that an acoustic distance

measuring device (range finder) may be made integral with the laser pointer to enable accuracy of directional orientation in distance measurements. Claim 1 is so anticipated.

Claim 2 is anticipated by laser device (10).

Claims 3 and 6 are anticipated by display 162.

Claim 4 is anticipated by the aforementioned col. 12 wherein an acoustic range finder is suggested.

With respect to claim 5, see switch 156.

With respect to claim 11, it is argued that any tape measure has a lever to lock the retractable tape.

With respect to claim 12, it is anticipated that the measuring apparatus of Rando would measure an internal dimension (with the range finder) and external dimension (with the tape measure).

Claim 13 is anticipated by laser device (10) being used.

Claim 14 is anticipated by display 162 being used.

3. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by the Gardiner et al PCT publication ('978).

With respect to claims 1 and 2, see page 3, second full paragraph of the Gardiner et al PCT publication.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 7, 8 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over the patent to Rando ('627).

Claims 7, 8, 17 and 18 specify that the apparatus claimed includes a standard and metric button to display the dimension in feet/inches or metric units. Although Rando does not specify the length dimension measurements in either feet/inches or metric units, it would have been obvious to one of ordinary skill in the art that a length measurement in feet/inches or metric units is within the purview of Rando's system.

With respect to claims 15 and 16, it is further obvious to one of ordinary skill in the art that using an acoustic range finder with a tape measure would include using a button or switch (i.e., switch 156) to display the length dimensions measured.

***Allowable Subject Matter***

6. Claims 9, 10, 19 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

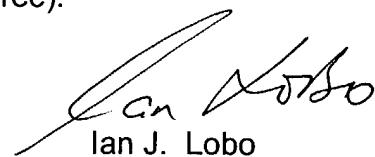
7. Claim 21 is allowed.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
  
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ian J. Lobo whose telephone number is (703) 306-4161. The examiner can normally be reached on Monday - Friday, 6:30 - 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas H. Tarcza can be reached on (703) 306-4171. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ian J. Lobo  
Primary Examiner  
Art Unit 3662